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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/066,005

01/31/2002

Neil D. Scancarella

Rev 01-3

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NEW YORK, NY 10017

EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

06/27/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/066,005	Applicant(s) SCANCARELLA ET AL.	
	Examiner GINA C. YU	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17,38-41 and 56-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17,38-41 and 56-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 11, 2008 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17, 38-41, 56-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites "nonreactive with but interactive to the pigmented composition". The phrase renders the claim vague and indefinite because the meaning of the phrase is unclear. It is not clear how a same wetting agent can be nonreactive with but at the same time interactive to the pigmented composition.

The remaining claims are rejected as they depend on the base claim.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 17, 38-41, 56-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Drechsler et al. (US 6074654) as evidenced by STN Registry.

Claim 17 recites “[a] lip cosmetic comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone, composition for use in combination with a non reactive wetting agent having affinity to, the composition, said wetting agent being a liquid polymeric hydrocarbon having a number average molecular weight greater than 650 devoid of non-volatile silicone oils, and wherein the wetting agent overcoat composition flows smoothly over the composition”. In this case, the claimed subject matter is a cosmetic composition comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone. The recitation “for use in combination with a non reactive wetting agent” and onward denotes the intended use and purpose of the cosmetic containing the cross-linked resinous silicone and does not further define the silicone composition. Claims 38-41 and 56-59 are directed to the wetting agent overcoat composition of the preamble which recites for how the transfer-resistant silicone composition is used, and do not add any limitation to the claimed subject matter. Thus no patentable weight is given to these claims. The newly added limitation, that the wetting agent is an alpha olefin copolymer and "nonreactive with but interactive to the pigmented composition" modifies the wetting agent with which the lip cosmetic is used, and does not limit the claimed lip cosmetic itself.

Drechsler discloses a lip color film-forming composition comprising crosslinked organosiloxane resins such as Wacker 803 from Wacker Silicones Corp. (trimethylsiloxysilicate) and pigments in a volatile carrier. See col. 7, line 46 - col. 9, line

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2. The reference also discloses a method of enhancing the gloss, shine, and feel of lip composition by apply a complimentary product, known as "overcoat" or "topcoat", over the film formed after application of a transfer-resistant lip composition. See col. 10, line 63 - col. 16, line 7. The reference also teaches in col. 2, lines 7-13 that it is well known in the art to formulate a transfer-resistant cosmetic composition with trimethylated silica and volatile solvent. The reference teaches using the film forming silicone resin in the amount ranging from 10 to 95 %. See instant claims 63 and 64. Example 7 also contains 10 % of Bentone Gel VS-5PC, which contains quaternium-19 hectorite. See STN-Registry. See instant claims 60-62, 65.

Response to Arguments

Applicant's arguments filed on June 11, 2008 have been fully considered but they are not persuasive.

Applicant asserts that the prior art overcoat composition fails to teach alpha olefins of the present claims. However, as discussed above in the rejection, the claimed invention is "a lip cosmetic comprising an anhydrous pigmented transfer resistant, film forming, cross-linked resinous silicone", and the wetting agent and the described properties of the wetting agent are not part of the claim limitations.

Conclusion

No claims are allowed.

Primary Examiner, Art Unit 1617Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose

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telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1617